The attempted taxation is charged to be a violation of the due process of law clause of the Fourteenth Amendment.

Mr. Justice Brown wrote the opinion sustaining the plaintiff's contention, basing his decision on the following principles: the power of taxation is exercised upon the assumption of an equivalent rendered to the taxpayer in protection to his person or property and in other matters; if the property is wholly within the taxing power of another state to which it may be said to owe allegiance and to which it looks for protection, and if the power attempting to tax is not in a position to benefit or protect the property or person to be taxed, the taxation, based merely upon domicile, partakes rather of the nature of extortion than taxation; it is therefore beyond the power of the legislature of Kentucky to lay such a tax. It is to be observed that this case does not involve the question of the taxation of intangible personal property, or of inheritance or succession taxes, nor questions arising between different municipalities or taxing districts within the same state.

Chief Justice Fuller and Justice Holmes agreed in the decision arrived at but doubted the application of the Fourteenth Amendment to the result.

THE RIGHT OF A CARRIER TO DEAL IN THE GOODS IT CARRIES.

Railroad rates and rebates, railroad regulations and remedies have occupied the attention of the American public through debates in Congress, comments in the newspapers and criticism in the magazines to the exclusion, altogether, of other pressing questions in world politics. The situation in this country upon the subject resembles, to a marked degree, the present English discussion on tariff reform; both seem to be universally misunderstood.

As a commentary upon the rate problem the recent opinion of Mr. Justice White of the Supreme Court, showing as it does both the strength and the weakness of the present legislation, is like a bell in the fog of popular misconception. Considering the Interstate Commerce Act of 1887 in a phase never before squarely presented before it, the Supreme Court of the United States in *New York, N. H. & H. R. Co. v. Interstate Commerce Com.*, 26 Sup. Ct. 272, affirmed and enlarged an injunction granted below restraining the Chesapeake & Ohio R. Co. from further executing an agreement to deliver coal in New Haven at $2.75 per ton when the cost of purchase of the coal at the mines, plus the cost of delivery and the published freight rates, aggregated $3.92 per ton.

The case went upon the ground that the prohibitions in the second, third and sixth sections of the act to regulate commerce concerning any departure from the public rate "directly or indirectly," any "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage" and "unjust discrimination" were in direct conflict with the asserted right of a carrier to sell the commodities which it transports at a price less than the cost and the published rates, and to attribute the loss to the company in its capacity as dealer and not as a carrier.

The court further increased the efficiency of the Interstate Commerce Act by interpreting the prohibitions therein contained as ever operative; from such a construction it is apparent that a contract by a railroad to sell and transport coal at a stipulated price comes within the prohibitions of the act whenever, from any cause, the gross sum realized is insufficient to yield the market rate of the coal plus the freight rate, although the contract may not have been open to that objection when made. The reason for this, according to Mr. Justice White, is that "This must be the case in order to give vitality to the prohibitions of the Interstate Commerce Act against the acceptance at any time by a carrier of less than its published rates. We say this because we think it obvious that such prohibitions would be rendered wholly ineffective by deciding that a carrier may avoid those prohibitions by making a contract for the sale of a commodity stipulating for the payment of a fixed price in the future and thereby acquiring the power during the life of the contract to continue and execute it, although a violation of the act to regulate commerce might arise from doing so."

But, even granted that a violation of the act is thus prevented, what would hinder a carrier from turning such a construction to its advantage, and by raising its own freight rates—as it may lawfully do if still reasonable (Int. Com. Act, sec. 3),—render illegal any unprofitable contract into which it might have entered?

The situation in respect to the great coal carrying railroads of this country is at present anomalous. The "purpose of the act to regulate commerce was to compel the carrier, as a public agent, to give equal treatment to all," but in so far as that statute was intended to affect all railroads alike, its object has been frustrated by the rulings of the Interstate Commerce Commission. To-day there are two distinct classes of carriers of coal; (1) railroads, such as the Chesapeake and Ohio, which are prohibited from making any undue discrimination or departure from their published rates by means of "dealing in the purchase and sale of

coal;" and (2) other carriers, the D. L. & W. R. Co. and the Lehigh Valley R. Co., being examples, which are not subject to the provisions of the act as to rates and undue preferences, because of the administrative construction given to the statute by the Interstate Commerce Commission. *Haddock v. D. L. & W. R. Co.*, 4 I. C. C. Rep. 296, and *Coxe Bros. v. Lehigh Valley R. Co.*, 4 I. C. C. Rep. 535, decided in 1890 and 1891. The controlling consideration in these decisions was that the railroads in question were, either by their charter or by legislative grant, existing at the time of the adoption of the act, possessed of the commingled attributes of carrier and producer, and hence, exempted from its operation. The somewhat doubtful logic of these cases seems to have been recognized by the commission in later holdings and the principles there stated only regarded as applicable to strictly identical cases. *In re Unlawful Rates*, 7 I. C. C. Rep. 33. Mr. Justice White considered the Supreme Court bound by these rulings, but rather significantly added: "at least, until Congress has legislated on the subject."

The press throughout the country has taken for granted that this decision places the American law upon the same footing as the English doctrine, *Att'y Gen. v. Great Northern R. Co.* 29 L. I. Ch. N. S. 794, and that the railroads are hereafter forbidden from dealing in the goods they carry, but the wish, in this case, has been father of the thought, as the court expressly refrains from determining this question (p. 276) and limits its decision to a denial of the right of a railroad "to become a dealer under the circumstances stated," *i. e.*, when the price stipulated in the contract does not pay the cost of purchase, the cost of delivery and the published freight rates.

FEDERAL INTERFERENCE WITH STATE ADMINISTRATION OF CRIMINAL LAW.

In the case of the *United States ex rel. Drury & another v. Lewis, Warden of the Common Jail of Alleghany County, Penn.*, 26 Sup. Ct. 229, the Supreme court takes a very important stand relative to interference by Federal courts in the state administration of criminal law. It was held that the Circuit Court had properly denied *habeas corpus* to persons in the military service of the United States, held in custody of state authorities to answer a charge of homicide which is asserted by them to have been committed in discharge of their duty, under the Federal Constution and laws, to apprehend the deceased for larceny of property from